No. 606

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

SAMUEL BAYER, ELIAS BAYER and WALTER V. RADOVICH.

REBUTTAL BRIEF ON BEHALF OF THE RESPONDENTS BAYER

CHARLES H. TUTTLE,
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The Petitioner's reply brief was not delivered to counsel for the Bayers until shortly before the argument and there was no opportunity adequately to examine it in the courtroom.

We find on pages 22 and 23 thereof that there is reference to an army letter, dated November 25, 1943, authorizing the transfer of these boys from the base at Goldsboro, North Carolina, to the Air Transport Command at Wilmington, Delaware (Rec., pp. 122-3, 1218). The Petitioner thereupon attempts to argue that because of that letter the transfer of the boys from the Burma Commando Unit must have been set in motion before Radovich was paid $5,000 at a time not later than November 27th.

Such argument loses its entire force because of the fact that the boys did not arrive at Goldsboro, North Carolina,

from New England until at least 3:30 in the afternoon of November 25th (fol. 2586) and by that time Radovich, in New York, had extorted the promise of the Bayers to deliver $5,000 to him promptly thereafter. The actual order for the transfer of the boys from the Burma Air Commando Unit to the Air Transport Command at Wilmington, Delaware, is dated November 29, 1943, and did not actually issue until then (fols. 362-3).

Furthermore, it is to be borne in mind that before that special order issued on November 29th, Lt. Col. Boebel, who was the Adjutant of the Air Commando Unit at Goldsboro, had, after the arrival of the boys there, found them unfit for its purposes (fols. 791-2, 795-6, 817-8). Called as a witness by the Government he testified that he thereupon told Radovich that "they are not the calibre of man that we are looking for" (fol. 795), and that they should be transferred out of the Air Commando Unit. It is significant that this witness for the Government did not testify that Radovich claimed to have already ordered them out of the unit. On the contrary, Col. Boebel said that Radovich explained that he had ordered them into the unit solely as "a favor to Col. Jacobson" (fol. 792). Col. Boebel also said that Radovich further said "he would take my word for it and have them transferred out of our organization" (fol. 792).

At least two days prior to such special order, Government's Exhibit 4, dated November 29, 1943, Radovich had received the $5,000 (fols. 3758, 3765-6, 3839-41). Although Radovich knew at that time that the boys were not acceptable for the Commando Unit and must be transferred out of the Commando Unit, the Bayers did not know these facts and it was because the Bayers did not know the truth of the situation that Radovich was able to accomplish his scheme of extorting the $5,000 from them. At the time of

the extortion the special order for the transfer of the boys had not yet issued; they were still in his unit and under his control and as far as the Bayers knew Radovich was still in complete command of the situation and would carry out his threat if they had failed to make the payment of the $5,000.

Respectfully submitted,

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